

 <div style="text-align: center;"> STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES </div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">Policy and Procedure</div>		POLICY AND PROCEDURE NUMBER 11.03.018	PAGE 1 of 4
		EFFECTIVE DATE December 15, 1993	
SUBJECT Determination of Materiality		SUPERSEDES	DATED
TITLE State Equipment Fleet	CHAPTER SEF Procurement	APPROVED BY	

I. Purpose and Scope:

The purpose of this procedure is to provide guidelines for determining if a deviation from the requirements and specifications set out in an Invitation to Bid (ITB) is "material" and can or cannot be waived when making bid awards. This procedure applies to procurements for the Statewide Equipment Fleet (SEF).

Introduction:

The state procurement code AS 36.30.170 requires bids to be awarded to the lowest responsible bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

The concept of materiality centers around the premise that it is not in the best interests of the state to reject bids for minor informalities and/or deviations that do not harm other bidders and do not diminish what the state is receiving in any major (material) way. The major/minor deviation test is often used in conjunction with materiality; i.e., if a deviation is "major", it is also material; if it is "minor", it is not material.

Responsibility/Performance:

SEF Manager	Periodically review decisions of materiality to ensure consistency of application and compliance with the state procurement code.
Procurement Officer	Make all decisions of materiality in keeping with these procedures and past practice.

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Definition:

Black's Law Dictionary, 5th Edition defines **Material** as:

"Important, having influence or effect; having to do with matter as distinguished from form; representation relating to matter with is so substantial and important as to influence the facts of the case."

"A material fact is one which constitutes substantial consideration, or without which, the contract could not have been made."

See Attachment A for additional definitions and interpretations.

Reference:

AS 36.30.170

SEF Bid Package, Section VIII

II. Distribution:

All holders of the Procedures Manual; SEF Procedures Manual holders.

III. Procedure:

A. The following guidelines should be used when determining whether a deviation is material.

1. Does the variance give the bidder a substantial advantage over other bidders?
2. Does the deviation have more than a negligible effect on price, quantity, delivery, or contractual conditions?

If the answer to either of the above is "yes," the deviation is material and cannot be waived.

B. In general, the above tests can be applied to determine if a deviation is material or not. In cases where special circumstances prevent a clear cut determination, consult with the SEF Fleet Manager and/or the Attorney General's office for an opinion prior to preparing an Intent to Award.

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IV. Attachments

A. Additional Definitions (including the SEF bid package definition of **Materiality**)

Attachment A - Additional Definitions

The following references provide additional guidance in determining materiality, including the definition as stated in the SEF bid package.

A. SEF Bid Package

Section VIII, of the SEF bid package defines **Material Deviation** as follows:

"A material (major) deviation is one that is significantly different from an essential aspect of a specification. Bidders should carefully address each specification in the invitation to bid. Deviation from a specification MAY result in your bid being deemed nonresponsive by the procurement officer if the deviation is material.

The procurement officer may be justified in accepting a non-material deviation--it depends upon the circumstances of the contracting agency and the proposal in the bid. If a bid deviation has a negligible effect on price, quantity, delivery, or contract conditions it is not material and can be waived or corrected by the contracting officer."

Further, MINOR INFORMALITIES are defined as:

"Non-material deviations which are matters of form rather than substance and are evident from the bid document, or are insignificant matters that have a negligible effect on price, quantity, delivery, or contractual conditions and can be waived or corrected without prejudice to other bidders."

B. Webster's Dictionary

"...of substance; important, essential, or pertinent (to the matter under discussion)."

C. Alaska Supreme Court decision (Chris Berg, Inc.) said that "a variance is material if it gives the bidder a substantial advantage over other bidders and thereby restricts or stifles competition."